

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLAND DIVISION

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

Plaintiff,

v.

CITY OF PORTLAND,

**ORDER SETTING NOTICE AND
PROCEDURES FOR FAIRNESS
HEARING**

Defendant.

This matter comes before the Court upon the unopposed motion of Plaintiff, United States, to set certain procedures for a fairness hearing regarding the Parties' jointly proposed Settlement Agreement. ECF #3-1 ("Agreement"). The purpose of the proposed Agreement is to resolve the United States' claims in this matter concerning certain policing practices, rather than engaging in contested litigation.

Prior to making factual findings as to whether the Agreement, as a whole, is fair, adequate, and reasonable, the Court will conduct a hearing to receive relevant, non-cumulative public comment from all interested stakeholders. To effectuate an efficient and fair process to receive public testimony, and to receive briefing from the Parties addressing public comments, and the fair, adequate, and reasonable standard of review, the Court hereby:

ORDERS the following process and schedule for the submission of written comments, and the taking of oral testimony at a fairness hearing. If a member of the public, or an organization, desires to provide oral testimony, such individual or organization must provide the

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Court with a written submission summarizing the topics about which the individual or organization desires to provide testimony to the Court. All such written submissions shall be made on, or attached to, the form appended to this Order as Exhibit A, and must be received by the Clerk of Court no later than [insert date 30 days from the date of the Order] at 4:30 pm PST.

DIRECTS the Clerk to make available to the public the appended form attached hereto as Exhibit A, which individuals and organizations shall use for the purposes of submitting written comments to the Court. The form shall be available at the Civil Intake Counter and on the District Court's public website: <http://www.ord.uscourts.gov/en/public/for-the-public>.

FURTHER DIRECTS the Clerk to maintain the original submitted forms and attachments on file until the case is closed. The written submissions will not be made part of the record, unless and until I deem otherwise, but shall be considered by the Court and the Parties for the purposes of the hearing. The Court shall utilize the submissions of individuals and organizations to determine the scope of relevant, non-cumulative testimony that such individuals and organizations may offer the Court on record at the fairness hearing. All such testimony shall be provided under oath and shall be subject to cross examination by counsel for the Parties.

IT IS FURTHER ORDERED that the Parties shall provide the Court pre-hearing briefing by [insert date 2-weeks prior to fairness hearing] on the matters it believes the Court should consider in determining whether the proposed settlement agreement is fair, adequate, and reasonable. The Parties shall take into consideration any written submission not previously considered by the Parties. The Parties are not required to provide responses to all comments, but may choose to do so, or the Court may seek specific responses from the Parties.

The Court ORDERS a fairness hearing on [insert date/time] to receive both argument from the Parties, as well as relevant public testimony concerning the fairness, adequacy, and reasonableness of the proposed Agreement.

The Parties are HEREBY DIRECTED to post this Order on their public internet sites within three (3) business days of the issuance of this Order, and to provide copies to their customary media contacts. Furthermore, any individual or representative who previously provided comment to either party, and provided contact information to the party, should be provided a copy of this order via electronic mail by the party that was contacted, or by first class mail if no email contact was provided. Further distribution for posting to community centers within Portland city limits is encouraged.

The fairness hearing is ORDERED to be conducted in the following fashion. Upon arrival to the Courthouse, members of the public who previously submitted written comments, and noted their request to provide oral testimony, will sign-in at Courtroom [insert number] to notify the Courtroom Deputy Clerk that they are present and ready to testify. Any member of the public, or organization, who desires to be heard at the evidentiary hearing, must have previously presented written comments, and requested to provide oral testimony as provided on the attached form. The Court will determine the order of the individuals providing testimony. Each member of the public will be provided three (3) minutes to provide oral testimony. Organizations providing testimony will be limited to presenting three (3) representatives of their organization. Each representative will have three (3) minutes to testify. The Court may extend time for testimony for good cause. Only testimony and other evidence that is relevant, as determined by the Court, will be allowed at the hearing.

It is FURTHER ORDERED that upon the close of the fairness hearing, the Parties shall submit post-hearing briefings by [insert date 30 days from the close of the hearing to permit production of transcripts] concerning any argument they would like to submit in rebuttal to, or in clarification of, the public testimony provided to the Court.

Nothing in this Order waives the Parties' governmental, executive, settlement, or attorney-client privileges.

SO ORDERED this _____ day of _____, 2013.

MICHAEL H. SIMON, United States District Judge
District of Oregon

Presented by:

S. AMANDA MARSHALL United States Attorney District of Oregon	THOMAS E. PEREZ Assistant Attorney General Civil Rights Division JONATHAN M. SMITH Chief, Special Litigation Section
<u>/s/ Adrian L. Brown</u> ADRIAN L. BROWN BILLY J. WILLIAMS Assistant U.S. Attorneys	<u>/s/ Laura L. Coon</u> LAURA L. COON Special Counsel <u>/s/ R. Jonas Geissler</u> R. JONAS GEISSLER <u>/s/ Michelle A. Jones</u> MICHELLE A. JONES Senior Trial Attorneys